Order Form (06/97)

(9)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 3859	DATE	2/12/2003
CASE TITLE	Heller Financial, Inc. Vs. 2500 Peachtree Assoc. et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

Memorandum Opinion and Order

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due .

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Enter Memorandum Opinion and Order. We enter judgment for plaintiff and against the present defendants in the amount of $2,405,619.00.

(11) ■ [For further detail see order attached to the original minute order.]

	No notices required, advised in open court.		number of notices	Document Number
	No notices required.		FEB 13 2003	
	Notices mailed by judge's staff.		date docketed	
	Notified counsel by telephone.		AMK	24
✓	Docketing to mail notices.		docketing deputy initials	
✓	Mail AO 450 form.			
	Copy to judge/magistrate judge.		date mailed notice	
WAII	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials	

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HELLER FINANCIAL, INC., a Delaware corporation,	)	
Plaintiff,	)	
vs.	)	No. 02 C 3859
2500 PEACHTREE ASSOCIATES, LLC, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

From time to time this court is called upon to make a determination that has virtually no likelihood of having any practical significance but which is necessary to bring closure to the dispute. This is such an occasion.

Defendants Akhavan, Gunter, Kelley and Urban Holdings, LLC ("present defendants") executed a guaranty in favor of plaintiff related to a loan for the development of a condominium project. The project apparently encountered difficulties – it was never completed. Plaintiff sought to recover on the guaranty and it obtained a judgment of $3.5 million against each of the present defendants. It appears that plaintiff's likelihood of collection of those judgments ranges from slim to none.

Still, plaintiff also had a right under the guaranty to recover the cost of completion of the project even though it chose not to complete the project. That cost was estimated to be $2,405,619. Plaintiff now seeks a judgment on that amount from the present defendants because its losses on the loan far exceeded the $3.5 million drawn on a letter of credit from a senior lender, the basis of the prior judgments.

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One defendant, Kelley, characterizes that recovery as an unenforceable penalty, but it is not. When the project went into bankruptcy plaintiff could have completed the project at its expense, hoping that it could more than recover the added investment by its recovery as a creditor from the sale of the condominium project as a completed asset of the bankrupt estate. But it did not need to take that risk. It could, instead, refuse to advance further funds and confine its recovery to its share as a creditor in the proceeds from the sale of the incomplete project, an amount which obviously would be less than the value of a completed project. That is the course it chose to pursue. The quaranty permitted plaintiff to elect to complete the project, with that amount recoverable from the guarantors, with the hope but without the certainty that the funds advanced would be more than covered by an increase in its share in bankruptcy, or to forego that option and settle for a lesser recovery in bankruptcy. That was an election plaintiff had a right to make in its effort to minimize its losses. We enter judgment for plaintiff and against the present defendants in the amount of $2,405,619.

James B. Moran

JAMES B. MORAN
Senior Judge, U. S. District Court

Feb. 17, 2003.